

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

MAR -81999

IN THE MATTER OF:

DOCKET NUMBER: 98-00276

COUNSEL: None

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

1. The Article 15, dated 11 Dec 87, be removed from his records and he be awarded all back pay and allowances.
2. He be given credit for the five years he was taken out of his career field and allowed to test for promotion.
3. He be promoted to master sergeant, senior master sergeant, or to an equal level with his peers.

APPLICANT CONTENDS THAT:

The reasons applicant believes he has been the victim of an error and/or an injustice are contained in his complete submission, consisting of two DD Form 149s and attachments, which is at Exhibit A.

STATEMENT OF FACTS:

Applicant retired in the grade of technical sergeant (Date of Rank: 1 Sep 97) on 1 Apr 98 due to high year tenure (HYT). He had 20 years and 14 days of active duty.

The relevant facts pertaining to the Article 15 issue, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

The applicant's records reflect he experienced multiple medical problems during his career, to include surgery, physical profiles, and permanent restrictions.

A Medical Evaluation Board (MEB) reviewed his condition on 13 Jul 88 and recommended he be returned to duty. A message from HQ AFMPC to the applicant's group advised that reclassification or retraining action was not warranted unless physical restrictions

prevented a member from working anywhere in his AFSC, and that certification from the commander that a member could not be effectively utilized should be the basis for medical recommendation for cross training.

A 6 Jan 89 Narrative Summary indicates that applicant's medical condition warranted his avoiding toxic fumes, dust, smoke or otherwise contaminated atmosphere. The recommendation was that he be considered for cross training if he could not return to his regular duties in aircraft maintenance, which was very doubtful.

A letter from the squadron section commander, dated 11 Jan 89, indicated that the applicant could not be used in his current AFSC with his medical problems and cross training was recommended.

On 9 May 90, an MEB recommended the applicant be continued on medical observation and care for six months for status post anterior ligament reconstruction, left knee.

On a Statement of Record Data, AF Form 1185, dated 16 May 90, the applicant requested consideration for retraining.

The applicant continued to experience medical problems. In a letter dated 24 Jan 91, the Chief, Physical Therapy, supported applicant's desire to be retained as an active duty member and cross trained to a less strenuous career field.

Another MEB convened on 13 Feb 91 and returned the applicant to duty. Another message from HQ AFMPC to applicant's group advised that reclassification/retraining action was not warranted unless physical restrictions prevented him from working anywhere in his AFSC. A Narrative Summary for cross training was written on 12 Jun 91; however, the page containing the recommendation is missing.

On 12 Feb 92, applicant applied for a staff sergeant slot in the 702X0 career field.

The applicant's performance reports indicate that from 17 Mar 78 to 18 Nov 87 he held a primary/duty Air Force Specialty Code (AFSC) of 43131C and/or 43151 with duties in the aircraft maintenance/inspection field. As of 19 Nov 87 he still held a duty AFSC of 43151, but he was titled an assistant dormitory manager. On 19 Nov 88, he had a duty AFSC of 45254M and a title of squadron mobility NCO. He was the disaster preparedness NCO (45254A) as of 11 Aug 90. On 2 Apr 91, he had a duty AFSC of 74131 and a duty title of squadron training NCO. On 6 Oct 92 he was the fitness and recreation specialist with a duty AFSC of 78150. From 9 Mar 93 until his retirement, he held a duty AFSC of 3M051 and held the consecutive duty titles of recreation and fitness specialist, services specialist, and culinary arts

specialist/supervisor. The overall ratings reflected on the available reports are: 9, 8, 7, 9, 9, 8, 9, 9, 9, 9, 9, 9, 4 (New System), 5, 5, 4, 5, 5, and 5.

AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAJM, evaluated the case and provides the details pertaining to the Article 15. The author concludes that the Article 15 action was properly accomplished and the applicant was afforded all rights granted by statute and regulation. There is nothing in the record to indicate the commander was unfair or [not] impartial. The Article 15 was within legal limits and was appropriate to the offense. Denial is recommended.

A copy of the complete Air Force evaluation is at Exhibit C.

The Chief, Skills Management Branch, HQ AFPC/DPPAE, also reviewed the appeal and comments that review revealed no retraining application on file. By regulation, the applicant cannot submit for retraining after reaching 16 years of service. In this case, the applicant went over 16 years on 17 Mar 94 and would not have been eligible for voluntary retraining after this time frame. Denial is recommended.

A copy of the complete Air Force evaluation is at Exhibit D.

The Chief, Enlisted/BCMR Section, HQ AFPC/DPPPWB, examined the application and indicates that the Article 15 during this time frame would not have been an automatic ineligible for promotion condition. The applicant was nonrecommended for promotion by his commander for the 89A6 cycle. However, the author cannot determine the reason for the commander's action. In summary, during the period the applicant was an Assistant Dormitory Manager from 1 Nov 88-22 Aug 92, he was not disadvantaged because he was performing duty out of his Control Air Force Specialty Code (CAFSC). The author explains why, and recommends that applicant's request for promotion to master sergeant or senior master sergeant be denied.

A copy of the complete Air Force evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant rebutted the evaluations, indicating that when he first requested to cross train he had only 11 years in the military. The paperwork to get him cross trained evidently was never turned in. He wasn't just a Dorm Manager for the 1 Nov 88-22 Aug 92 period; he was in various positions. He was only supposed to be out of his career field for 190 days at the most, not five years.

As for the Article 15, he can't be held responsible for following orders that turned out to be wrong.

Applicant's response, with attachments, is at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and the applicant's submission, we are not persuaded the contested Article 15 should be voided, or that the applicant should be allowed to test for promotion or be promoted. His contentions are duly noted; however, we do not find these uncorroborated assertions, in and by themselves, sufficiently persuasive to override the available evidence of record. The Article 15 was properly accomplished and the applicant was afforded all rights granted by statute and regulation. The nonjudicial punishment was within legal limits, appropriate to the offense, and does not appear unjust or disproportionate. Because of his medical problems the applicant performed duties out of his Control AFSC. However, he has not provided persuasive evidence to show that he was disadvantaged by this. In view of the above and absent persuasive evidence to the contrary, we find no compelling basis to recommend granting the relief sought.
4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without legal counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 15 December 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. Frederick A. Beaman III, Member
Ms. Patricia D. Vestal, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 22 Jan 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 6 Mar 98.
- Exhibit D. Letter, HQ AFPC/DPPAE, dated 20 Apr 98.
- Exhibit E. Letter, HQ AFPC/DPPPWB, dated 29 Apr 98.
- Exhibit F. Letter, AFBCMR, dated 11 May 98.
- Exhibit G. Letter, Applicant, received 5 Oct 98, w/atchs.


MARTHA MAUST
Panel Chair